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In the Matter of)	
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Request To Update Default)	WC Docket No. 03-225
Compensation Rate For)	
Dial-Around Calls From Payphones)	
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DSMDB.1958894.1

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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REPLY COMMENTS OF THE
AMERICAN PUBLIC COMMUNICATIONS COUNCIL

The American Public Communications Council ("APCC") hereby submits reply comments in response to the Commission's further notice of proposed rulemaking in this matter.¹ In the *Further Notice*, the Commission proposes to update the per-phone rate of dial-around compensation that applies when carriers do not track payphone calls and thus do not pay compensation on a per-call basis.

In its comments, APCC did not oppose resetting the per-phone compensation rate, but urged the Commission to be especially careful to ensure that a revised per-phone rate is fair to payphone service providers ("PSPs"), because, in the past, PSPs have not been fairly compensated by per-payphone compensation rates, due to regulatory lag and carriers' ability to control the compensation process.

In order to provide new information sought by the Commission on the average number of dial-around calls per payphone (*Further Notice* ¶ 12), APCC analyzed dial-

¹ *Request to Update Default Compensation Rate for Dial-Around Calls from Payphones*, WC Docket No. 03-225, Further Notice of Proposed Rulemaking, FCC 05-71 (rel. March 14, 2005)(*"Further Notice"*).

around payments received by its dial-around compensation clearinghouse, APCC Services, Inc., for calls completed during the two-year interval from July 1, 2002, to June 30, 2004. For the 328,000 payphones, on average, for which APCC Services collected per-call compensation payments during this period (approximately 60% of the independent payphone industry), the PSPs represented by APCC Services were paid for an average of 96 calls per payphone per month. Given that this average does not include a significant number of completed calls that go unpaid, APCC Services urged the Commission to ensure that independent PSPs receiving per-payphone compensation are compensated for no fewer than 96 calls per payphone per month.

I. NO PARTY SUBMITTED DATA SUPPORTING AN OVERALL PER-PAYPHONE RATE LESS THAN \$47.42 PER PAYPHONE PER MONTH

Only three parties – APCC, the the RBOC Payphone Coalition and AT&T – submitted comments in response to the *Further Notice*. In its comments, moreover, the RBOC Payphone Coalition expresses the view that the Commission “should not devote scarce resources to the development of a new per-payphone compensation rate, because only a fraction of the payphones would be affected.” RBOC Payphone Coalition Comments at 1. It appears, therefore, that the issue of the per-payphone compensation rate is not a matter of great concern to the vast majority of carriers, and has little impact on PSPs other than independent PSPs.

Significantly, neither AT&T nor the RBOC Coalition submitted any current data showing the average volume of dial-around calls at a payphone. Thus, the only estimate of average call volume with support in the record is APCC’s conservative estimate of 96 dial-around calls per payphone per month. This estimate represents a

35% decline from the previous estimate of 148 dial-around calls per payphone per month.

A. AT&T's Extrapolations Are Unreliable

Instead of submitting current data that might have contributed to the basis for calculating a revised per-payphone rate, AT&T has provided only speculative extrapolations from old data submitted by the regional Bell Operating Companies ("RBOCs") in 2002. AT&T acknowledges that such extrapolations cannot provide any reasonable basis for calculating a revised rate. Rather, AT&T contends that its extrapolations do "serve as a reality check" for any new data submitted by other parties. In fact, the Commission cannot reasonably rely on AT&T's extrapolations even as a "reality check." AT&T applies unsupported assumptions about calling trends to data sets that were never intended to provide – and could not support – valid estimates of per-phone call volumes in the first place.

1. The RBOCs' 2002 data do not provide reliable estimates of average call volume

The RBOC data submitted in 2002 did not produce reliable estimates of average per-payphone call volume even for the 2000-2001 period from which the data were taken. As the Commission recognized in the *Further Notice* (§ 11), some of the RBOCs submitted traffic data from all payphones in their territory, while others submitted traffic data only from their own payphones. Even assuming that, despite these inconsistencies, each of the RBOCs accurately reported the total number of payphones from which the reported calls originated (a degree of accuracy that was not required for purposes of estimating percentage market shares), the fact that several RBOCs excluded independent payphones from their studies would have caused systematic

undercounting of per-phone call volumes due to the exclusion of the relatively higher volume phones operated by independents

Moreover, the only calls counted were those exceeding a 40-second hold time (*id.*), which is a conservative surrogate for call completion even when applied to access code calls. APCC Comments at 11. And as APCC explained in its comments, use of a 40-second hold time is wholly inappropriate as a surrogate for completed subscriber toll-free calls because those calls are almost always answered within a short time after connection and because many completed subscriber toll-free calls (*e.g.*, calls to pagers) are of very short duration. *Id.*

2. AT&T fails to support its argument that the RBOC submissions were overstated

While urging the Commission to rely on the RBOC Coalition data from 2002 as a “reality check,” AT&T nonetheless agrees with APCC that the data cannot be accurate because it applies a 40-second hold time surrogate to all calls. AT&T, however, claims that the use of this surrogate results in “overstated” rather than understated estimates of call volume. There is no evidence or logic supporting this claim. Similarly, AT&T fails to support its claim that all the RBOCs included 0+ calls in their data – and in any event, the number of 0+ calls in 2000-2001 had substantially declined since 1996-97, the period to which the 18.67 calls estimate was applied. *See Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Fourth Order on Reconsideration and Order on Remand, 17 FCC Rcd 2020, 2029 (2002) (noting evidence that 0+ call volume was much lower in 2000 than in 1996-97). Equally unconvincing is AT&T’s claim that the fact that the data were solicited in order to calculate market share, not average per-phone call volume, makes the data more, not less, reliable as an

estimate of per-phone call volume. AT&T Comments at 10. In fact, data deficiencies such as the indiscriminate use of a 40-second surrogate, which may have been tolerable in data used solely for calculating percentage market shares, would not have been nearly as acceptable if the data were used for calculating average call volume, because they resulted in systematic undercounting of completed calls.²

3. AT&T's extrapolations from the RBOC data are unreliable

Even if the RBOC data from 2001-2002 had provided reliable average call volume estimates for that period, those estimates cannot be reliably extrapolated to the present, even for purposes of a "reality check." As AT&T itself repeatedly observes, the Commission has consistently sought to base its call volume estimates on current data. Moreover, AT&T's extrapolations admittedly rely on the calculation of a percentage decline in overall call volume for *all* call types (including coin calls, which represent well over half of all payphone calls), a number that has no necessary relationship to the percentage decline in dial-around calls. AT&T Comments at 11-12.

B. AT&T's Arguments On Weighting Of Data Are Now Irrelevant

AT&T argues that, in reconciling multiple data points, the Commission should use a weighted average rather than a straight average. *Id.* at 18-20. AT&T's argument is

² APCC does not understand the meaning of AT&T's cryptic argument that, if the Commission uses time-based surrogates for *uncompleted* calls, it must apply the same time-based surrogates to *completed* calls. AT&T Comments at 20. If AT&T is suggesting that surrogates should be applied to reduce the amount of *per-call* compensation in situations where completed payphone calls are being accurately tracked, then APCC strongly disagrees. Whether or not it might become necessary for the Commission to use time-based proxies for *per-phone* compensation, such use could not possibly justify using time-based proxies to deprive PSPs of *per-call* compensation for calls that are accurately tracked.

now irrelevant to this proceeding, because only one party, APCC, has submitted any data; therefore, there is only one data point available.

Even if there were multiple data points, however, it would not be appropriate, as AT&T suggests, to weight RBOC estimates based on their percentage of all payphones. As the Commission recognized in the *Further Notice* (¶ 14), per-payphone compensation generally applies only to “smart” payphones, which are used almost exclusively by independent PSPs and are used rarely by those RBOCs that have remained in the payphone business. Indeed, the fact that the RBOCs’ one-page comments provide no substantive data or input, and express the view that this proceeding should not consume any Commission resources, strongly suggests that the number of affected RBOC payphones is very small.

AT&T has also failed to provide any data points for consideration. In a rulemaking proceeding, it is incumbent upon interested parties to come forward with data supporting their concerns in the initial round of comments. If a party submits data with reply comments, other parties have no opportunity to evaluate and critique the data on which the party is urging the Commission to rely. Therefore, the Commission should not accept data submissions from parties that wait until the reply round to submit them.³

³ See *Cable & Wireless PLC v. FCC*, 166 F.3d 1224, 1233 (D.C. Cir. 1999) (Court is particularly deferential to Commission where parties with relevant data withhold it and subsequently challenge agency’s use of other data). Cf. *Further Notice* ¶ 12 (“We caution commenters at the outset that attempts to gain advantage by failing to provide us with the necessary context to evaluate their submissions will result in their data being discounted or rejected”).

APCC's estimate is based on a very large sample averaging 328,000 payphones, representing all payphones for which APCC Services collected per-call compensation. Multiplication of the 96 calls average by the current per-call rate of \$.494 yields a per-payphone rate of \$47.42 per payphone per month. Given that no other current data have been submitted, the Commission should set a revised per-phone compensation rate no lower than \$47.42 per payphone per month.

II. THERE IS NO RECORD BASIS FOR ALTERING THE ALLOCATION OF PER-PHONE COMPENSATION

AT&T contends that the allocation of calls among carriers has changed significantly since 2000-2001, and argues that it would be unlawful for the Commission to adjust the overall per-phone rate in order to take account of changes in the average volume of calls without also revising the percentage allocation of the overall per-phone rate among carriers.

Whatever changes may have occurred in the allocation of calls among carriers since 2000-2001, the difficulty is that no party has submitted data on which the Commission could rely as the basis for a reallocation. Therefore, there is no means to accomplish a reallocation in this proceeding.

APCC disagrees with AT&T's argument that, just because there is no data supporting a reallocation of carriers' shares of the overall per-payphone rate, the Commission is legally precluded from relying on data on average call volume to adjust the overall per-payphone rate. It is better to have a per-payphone rate that accurately

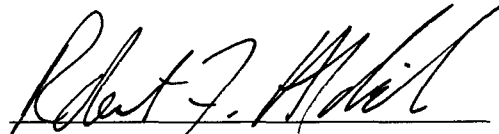
reflects two of the three rate elements identified by AT&T than a rate that accurately reflects only one or none of the elements.⁴

CONCLUSION

The Commission should adopt a revised per-payphone rate based on an average call volume no lower than 96 calls per payphone per month, and therefore should prescribe a rate no lower than \$47.42 per payphone per month.

Dated: July 25, 2005

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Robert F. Aldrich", written over a horizontal line.

Albert H. Kramer

Robert F. Aldrich

2101 L Street, N.W.
Washington, D.C. 20037-1526
(202)828-2226

*Attorneys for the American Public
Communications Council*

⁴ As noted above, the Commission should not accept data submissions from parties that wait until the reply round to submit them.

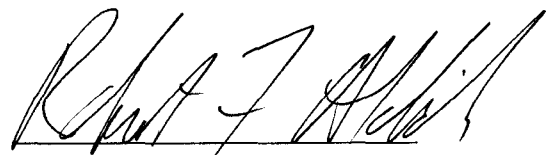
CERTIFICATE OF SERVICE

I hereby certify that on July 25, 2005, the foregoing Reply Comments of the American Public Communications Council was sent via electronic mail to the following:

Leonard J. Cali
Lawrence J. Lafaro
Martha L. Marcus
AT&T Corp.
Room 3A225
One AT&T Way Bedminster, New Jersey 07921
marthamarcus@att.com

Aaron M. Panner
Kellogg, Huber, Hansen, Todd,
Evans, & Figel P.L.L.C.
1615 M Street, N.W.
Suite 400
Washington, DC 20036
APanner@khhte.com

Best Copy and Printing, Inc.
Portals II, 445 12th Street, S.W.
CY-B402
Washington, DC 20554
fcc@bcpiweb.com

A handwritten signature in black ink, appearing to read "Robert F. Aldrich", written over a horizontal line.

Robert F. Aldrich